

## **Answering your questions about the complaint investigation process...**

### **What is a complaint?**

A complaint is a written signed statement by an individual or organization, which alleges a district, has violated a requirement of federal or state statutes or regulations that apply to a program. It must include a statement of the facts on which the complaint is based. Complaints must be sent to Special Education Programs to begin the investigative process.

### **Who can file a complaint?**

Any individual or organization may file a complaint. A complaint could even be received from an individual or organization from another state.

### **What has to be included to file a formal complaint?**

A complaint must be signed and include:

1. a statement that a public agency has violated a requirement of Part B or its implementing regulations,
2. the facts on which the statement is based
3. the signature and contact information for the complainant; and
4. if alleging violations against a specific child
  - the name and address of the residence of the child,
  - the name of the school the child is attending,
  - in the case of a homeless child available contact information for the child and the name of the school the child is attending
  - a description of the nature of the problem, including facts relating to the problem; and
  - a proposed resolution of the problem to the extent known.

A complaint must include an allegation that a violation occurred not more than one year prior to the date that the complaint is received. Longer periods of time would only be reasonable in situations where the violation is continuing or that the complainant is requesting compensatory services for a violation that occurred not more than three years prior to the date the complaint is received. Allegations outside of these time frames do not have to be accepted by Special Education Programs for investigation.

### **Does a complaint have to be mailed?**

Complaints must be received by Special Education Programs with signatures in place, and the complaint issues identified. Most complaints are mailed to Special Education Programs; however, it is acceptable to fax a written complaint to the office. Unsigned complaints will not be investigated.

Complaints received via email would not meet the definition of being signed and therefore will not be investigated unless followed up with a signed letter of complaint.

### **How long does Special Education Programs have to investigate the complaint?**

Complaints must be investigated and resolved within sixty days of receipt of the complaint letter. An extension to this timeline may be granted by the director of Special Education Programs ONLY in case of exceptional circumstances.

### **What can the complainant expect from the complaint investigation process?**

If you are the complainant, you can expect that upon receipt of the complaint, the complaint coordinator for Special Education Programs will contact you. The complaint coordinator will review the issues of the complaint with you and discuss the procedures for the investigation. A complaint investigation team will be appointed to investigate the complaint by the director of Special Education Programs. This investigative team will develop an investigative plan, including determining what documentation must be

reviewed and the individuals who will be interviewed by the team. After the fact-finding process is completed, a complaint report is generated. This report documents the information gathered throughout the investigation, the findings of fact and the conclusions of the investigation. If the district is found to be out of compliance, the report will also include corrective action. This corrective action is specifically designed to ensure that the areas of noncompliance are addressed, preventing future problems in this area. The entire process of investigating and issuing a complaint report must be completed with 60 calendar days, unless there are exceptional circumstances that warrant an extension.

**Can the complainant change their mind and ask for the complaint to be dismissed? What is the obligation of the Special Education Programs?**

The request to dismiss the complaint does not automatically guarantee that Special Education Programs will discontinue the investigation. The Special Education Programs is not obligated to discontinue the investigation and in fact, may proceed.

If SEP determines that the complaint has been satisfactorily resolved prior to the completion of the investigation process, they will send a letter to the complainant indicating the resolution. The dismissal or withdrawal of the complaint does not affect any future rights of the parties involved.

**Can both a complaint and a hearing request be filed on the same issue?**

If Special Education Programs receives both a hearing request and a complaint on the same issue, the complaint must be set aside until the conclusion of the hearing. A hearing officer's decision on the issue will be binding and final. If there are any issues in the complaint that are not part of the hearing request, the complaint investigation process will commence, adhering to the 60-day timeline for resolution.

**Is there an appeals process to the findings of a complaint investigation?**

IDEA regulations make no references to the requirement of establishing an appeals process to state complaint decisions. South Dakota does not have an appeals process as a component of its complaint investigation procedures. A parent or the school district, however, may initiate a due process hearing request on the complaint issue. A decision made in a due process hearing is final, however, any party aggrieved by the findings and decisions made by the hearing officer has the right to bring a civil action with respect to the complainant.

**What is the address of Special Education Programs?**

The address is:

Special Education Programs  
700 Governors Drive  
Pierre, South Dakota 57501  
605-773-3678 Fax 605-773-3782